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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,824	05/22/2006	Andreas Hutter	2003P16583	6262
24131	7590	01/05/2009	EXAMINER	
LERNER GREENBERG STEMER LLP			SETO, JEFFREY K	
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HOLLYWOOD, FL 33022-2480			ART UNIT	PAPER NUMBER
			2446	
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			01/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/577,824	HUTTER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jeffrey Seto	2446

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 May 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 19-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 19-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 May 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-1-2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims 19-38 are pending.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file. However, since no English translation of the Germany document has been received, the priority date of this application remains the filing date of the PCT application, 10-29-2004.

***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on 5-1-2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 19-22, 24, 33-35, 37 & 38 are rejected under 35 U.S.C. 102(e) as being anticipated by International Application Publication No. WO 03/055220 A1 to Holliman, et al. (Holliman).

5. Regarding claim 19, Holliman teaches a method for transferring data, the method which comprises: transferring data between a server and a client (See page 4, lines 3-7; wherein transmission over a network using TCP/IP inherently includes a server and a client); detecting quality-reducing events that result in a deterioration in a quality of the transferred data (See page 4, lines 3-5); detecting at least some of the quality-reducing events in the client and reporting the quality-reducing events in a feedback message from the client to the server (See page 4, lines 18-22; wherein the receiver is the client and the provider is the server); detecting at least some of the quality-reducing events in the server (See page 4, lines 18-22; wherein the reception and decoding of the feedback message in the provider is detection by the server); and logging the quality-reducing events (See page 5, lines 15-18; wherein logging of the events must be done in order to bill in accordance with received quality of service).

6. Regarding claim 20, Holliman teaches transmitting digitized video images and detecting the following quality-reducing events: freezing of video images (See page 9, lines 4-8); artifacts in video images (See page 7, lines 1 & 9); and reduction in a sharpness of video images (See page 6, lines 15-20).

7. Regarding claim 21, Holliman teaches calculating fees to be charged to a user for data transfer as a function of the logged quality-reducing events (See page 5, lines 17-18).

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8. Regarding claim 22, Holliman teaches the feedback message contains quantifying information for categorizing and/or specifying a particular quality-reducing event (See page 8, line 24 to page 9, line 8).

9. Regarding claim 24, Holliman teaches the feedback message contains one or more bits (See page 5, lines 20-22; wherein bits are inherent in a digital system).

10. Regarding claim 33, Holliman teaches transmitting the data in data packets (See page 5, lines 24-25).

11. Regarding claim 34, Holliman teaches transmitting Internet Protocol (IP) data packets (See page 4, line 7).

12. Regarding claim 35, this claim recites a data network for carrying out the method of claim 19, and is rejected for the same reasons.

13. Regarding claim 37, this claim recites a computer program for implementing the method of claim 19, and is rejected for the same reasons.

14. Regarding claim 38, this claim recites a computer readable medium with instructions for carrying out the method of claim 19, and is rejected for the same reasons.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. Claims 23 & 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holliman, as applied to claim 19 above, in view of U.S. Patent Application Publication No. 2003/0120773 to Mueller, et al. (Mueller).

16. Regarding claim 23, Holliman teaches the invention as described in claim 19. Holliman does not teach communicating in RTP/RTCP protocol and transmitting the feedback message in RTCP protocol. However, Mueller teaches this limitation (See page 2, paragraph 22). Using the feature of Mueller in the system of Holliman would have allowed for real time communications, thereby making the system more responsive. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Mueller and Holliman.

17. Regarding claim 26, Holliman teaches the invention as described in claim 19. Holliman does not teach detecting a transmitted data rate with the server and detecting a received data rate with the client, and reporting the received data rate to the server, and wherein the server detects a quality-reducing event if the difference between the received data rate and the transmitted data rate exceeds a predetermined value. However, Mueller teaches this limitation (See page 3, par. 48, lines 7-17). Using the feature of Mueller in the system of Holliman would have provided a simple to implement quality of service monitoring method, which would require very little overhead. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Mueller and Holliman.

18. Regarding claim 27, Holliman teaches the invention as described in claim 19. Holliman does not teach communicating in RTP/RTCP protocol and communicating the

received data rate detected by the client in the RTCP protocol. However, Mueller teaches this limitation (See page. 2, par. 22). Using the feature of Mueller in the system of Holliman would have allowed for real time communications, thereby making the system more responsive. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Mueller and Holliman.

19. Regarding claim 28, Holliman teaches the invention as described in claim 19. Holliman does not teach reporting to the server data losses detected by the client, and determining with the server an occurrence of a quality-reducing event in dependence of a size of the data losses. However, Mueller teaches this limitation (See page 3, par. 41, lines 1-5). Using the feature of Mueller in the system of Holliman would have provided accurate, detailed reports concerning data loss, thereby giving the end user high quality service. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Mueller and Holliman.

20. Regarding claim 29, Holliman teaches the invention as described in claim 19. Holliman does not teach communicating in RTP/RTCP protocol and communicating the data losses detected by the client in the RTCP protocol. However, Mueller teaches this limitation (See page 2, par. 22). Using the feature of Mueller in the system of Holliman would have allowed for real time communications, thereby making the system more responsive. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Mueller and Holliman.

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21. Claims 30, 31 & 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holliman, in view of Mueller, as applied to claim 28 above, and further in view of U.S. Patent Application Publication No. 2002/0065864 to Hartsell, et al. (Hartsell).

22. Regarding claim 30, Holliman in view of Mueller teach the invention as described in claim 28. These references do not teach the client has a buffer with a buffer size known to the server, the server is informed by the client in the event of data losses what data have been lost, and the server calculates therefrom an occupancy level of the buffer and thereby determines the occurrence of quality-reducing events. However, Hartsell teaches this limitation (See page 11, par. 101, lines 15-26). Using the features of Hartsell in the system of Holliman and Mueller would have provided the server with a more accurate picture regarding whether or not to send more data to the client, thereby preventing further loss of data. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Hartsell with Holliman and Mueller.

23. Regarding claim 31, Holliman in view of Mueller and Hartsell teach the invention as described in claim 30. Mueller further teaches communicating in RTP/RTCP protocol and communicating to the server the information what data has been lost via an extension in the RTCP protocol (See page 2, par. 22).

24. Regarding claim 36, Holliman in view of Mueller and Hartsell teach the invention as described in claim 30. Holliman further teaches the network is configured as an IP network and/or a UMTS network and/or a WLAN network (See page 4, line 7).

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25. Claims 25 & 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holliman, as applied to claims 19 & 24 above, in view of U.S. Patent No. 6,449,588 issued to Bowman-Amuah (Bowman).

26. Regarding claim 25, Holliman teaches the invention as described in claim 24. Holliman does not teach the feedback message contains one byte. However, Bowman teaches this limitation (See column 37, line 6; wherein the parameter relates to quality of service). Using the feature of Bowman in the system of Holliman would have provided a short feedback message, thereby reducing overhead by requiring very little bandwidth. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Bowman with Holliman.

27. Regarding claim 32, Holliman teaches the invention as described in claim 19. Holliman does not teach comparing the quality-reducing events in the server and in the client, and logging only the quality-reducing events detected by the server and by the client. However, Bowman teaches this limitation (See col. 51, lines 54-59). Using the feature of Bowman in the system of Holliman would have provided an accurate description of the level of service actually received by the client, thereby insuring appropriate billing of the client. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the teachings of Bowman with Holliman.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Seto whose telephone number is (571)270-7198. The examiner can normally be reached on Monday thru Thursday and alt. Fridays, 9AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Pwu can be reached on (571) 273-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JKS  
1/2/2009

/Joseph E. Avellino/  
Primary Examiner, Art Unit 2446